IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

RCRev..No. 148 of 2007()
---
RCA.39/2006 of ADDL. DISTRICT COURT-II, KOZHIKODE
RCP.27/2004 of MUNI-MAGI.COURT, PERAMBARA
.....

PETITIONER/APPELLANT/RESPONDENT/TENANT
---

MALAYIL KUNHIMOITHEEN,S/O.AMMAD,
HILL PRODUCE MERCHANT,RESIDING AT KALLOLIPOYIL,
CHENOLI AMSOM AND DESOM,KOYILANDY TALUK,KOZHIKODE
DISTRICT.

BY ADV. SRI.T.P.KELU NAMBIAR (SR.)
SRI.P.G.RAJAGOPALAN
SRI.M.GOPIKRISHNAN NAMBIAR

RESPONDENTS: RESPONDENTS/PETITIONERS/LANDLORD
---

1. VAZHAYIL AMMAD HAJI,S/O.KUNHAMMAD,
RESIDING AT BEERKANDIYIL,MANHANNIAM AMSOM AND
DESOM,P.O MANHANNIAM,VIA PERAMBRA,KOYILANDY
TALUK,KOZHIKODE DISTRICT.

2. BERKANDIYIL MOIDU,S/O.AMMAD HAJI,
RESIDING AT MENHANNIAM AMSOM DESOM,
P.O MENHANNIAM,VIA PERAMBRA,KOYILANDY TALUK,
KOZHIKODE DISTRICT.

3. BEERKANDIYIL MUHASSIN,S/O.MOIDU,
RESIDING AT -DO-

BY ADV. SRI.C.P.MOHAMMED NIAS C.P.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.1153 OF 2007 IN RCR.148 OF 2007

DISMISSED.

18.6.2007

SD/- J.B.KOSHY, JUDGE.
SD/- K.P.BALACHANDRAN, JUDGE.

// TRUE COPY //

TKS

**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

---

R.C.R.No.148 OF 2007

---

Dated 18th June, 2007

**ORDER**

**Koshy,J.**

Respondents filed an application under sections 11 (2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act (Act 2 of 1965) for evicting the revision petitioner from the rented premises . The Rent Control Court dismissed the petition under Section 11(2)(b), but, ordered eviction under Section 11(3). The Appellate Court dismissed the appeal and, therefore, there were concurrent findings. It has come out in evidence that the upstairs of the building in question was vacant. But, the bonafide need is for selling garments. It is submitted that it can be done only in the ground floor. According to the revision petitioner tenant, if the landlord is very particular that he can do the business of garments only in the ground floor, he is prepared to shift to the upstairs so that landlord can occupy the ground floor. After ascertaining from the client, counsel for the landlord also the agreed that, that suggestion can be accepted. In the above circumstances, tenant should give vacant possession of the ground floor of the scheduled building to the landlord on the condition that he will be given a room in the upstairs of the same main building. The landlord should give key of one

empty upstair room to the tenant within one month from today and thereafter within one month the tenant should shift his occupation to the upstairs and hand over vacant possession to the landlord. The same rate of rent should be paid by the tenant until it is revised without prejudice to the right of the parties to approach the rent control court for fixation of fair rent, if circumstances warrant. This revision petition is disposed of as agreed by the parties with the above directions.

**J.B.KOSHY**
**JUDGE**

**K.P.BALACHANDRAN**
**JUDGE**

tks